

Message Text

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ACTION EUR-12

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FM AMEMBASSY OTTAWA

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DEPT. PASS DOE FOR LES GOLDMAN AND DOE/FERC FOR
COMMISSIONER SMITH AND JOHN ADGER

E.O. 1162: N/A

TAGS: ENRG, CA

SUBJECT:AMENDMENTS TO NORTHERN GAS PIPELINE BILL (C-25)

REF: A. OTTAWA 1381, B. POSZ-ADGER TELECON OF MARCH 20, 1978

1. SUMMARY. AS REQUESTED, EMBASSY HAS RECEIVED FROM
GOC PIPELINE COORDINATOR ROBINSON INTERPRETATIONS AND
ASSURANCES CONCERNING RATIONALE FOR AMENDMENTS DEALING
WITH NATIVE CLAIMS AND LEGAL CHALLENGES TO PIPELINE
AUTHORITY ACTIONS. END SUMMARY.

2. IN LIGHT OF DOE CONCERN, EXPRESSED IN REF TELECON,
ABOUT IMPLICATIONS OF AMENDMENTS TO GOC ALASKA GAS
PIPELINE LEGISLATION CONCERNING NATIVE CLAIMS AND
LEGAL PROCEDURES, EMBASSY ECONOMIC COUNSELOR PLACKE
AND RESOURCES OFFICER POSZ CALLED ON GOC NORTHERN
PIPELINE COMMISSIONER ROBINSON MARCH 21 TO SEEK
CLARIFICATION ABOUT EFFECT OF THESE AMENDMENTS.

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3. EMBOFFS NOTED AMENDMENT OF CLAUSE 3 INTRODUCES
"JUST AND EQUITABLE" HANDLING OF NATIVE CLAIMS AS OBJECTIVE
OF PIPELINE LEGISLATION, THUS APPARENTLY PROVIDING
NEW BASIS FOR CHALLENGE BY NATIVE GROUPS TO OPERATIONS
OF PIPELINE AGENCY. AMENDMENT OF CLAUSE 23 TO SUBSTITUTE
ARTICLE 28 OF FEDERAL COURTS ACT FOR MORE RESTRICTIVE

ORIGINAL LANGUAGE OF DRAFT BILL PERMITS JUDICIAL REVIEW ON BASIS OF ERROR IN FACT OR VIOLATION OF NATURAL JUSTICE IN ADDITION TO ERROR IN LAW; AMENDMENT ALSO ENABLES REVIEW BY SUPREME COURT OF CANADA.

4. ROBINSON RESPONDED THAT WHILE THE BILL WAS BEFORE PARLIAMENT MANY MEMBERS, AS WELL AS THE PRESS, NATIVE ORGANIZATIONS AND OTHER CITIZENS GROUPS, WERE PARTICULARLY CRITICAL OF LACK OF SPECIFIC PROTECTION FOR NATIVE RIGHTS. ROBINSON SAID THAT GOVERNMENT ACCEPTED AMENDMENT OF CLAUSE 3 IN LIGHT OF ITS OBLIGATION TO PROTECT NATIVE RIGHTS. AMENDMENT ASSURES NATIVE PEOPLES THAT PIPELINE AGENCY DECISIONS WILL NOT PREJUDICE THEIR LAND CLAIMS. ROBINSON STRESSED GOVERNMENT REMAINS CONFIDENT IT CAN ACHIEVE NEGOTIATED SETTLEMENT OF NATIVE CLAIMS WITHOUT DELAYING CONSTRUCTION START-UP AS PLANNED FOR JANUARY 1981. HE SAID GOVERNMENT WILL CONTINUE TO OPPOSE ANY AMENDMENT REQUIRING SETTLEMENT OF CLAIMS BEFORE CONSTRUCTION BEGINS.

5. REFERRING TO AMENDMENT WHICH INCORPORATES ARTICLE 28 OF FEDERAL COURTS ACT INTO CLAUSE 23 OF BILL, ROBINSON SAID ORIGINAL PROVISIONS OF CLAUSE 23 STIMULATED MOST SERIOUS CRITICISM OF BILL IN COMMITTEE AND AMONG LEGAL PROFESSION THROUGHOUT CANADA. LAWYERS ASKED WHY ITS APPEALS PROVISIONS SHOULD BE MORE STRINGENT THAN THOSE LIMITED OFFICIAL USE

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IN THE NORMAL FEDERAL APPEALS PROCESS. THE GOVERNMENT'S CASE FOR NOT ADOPTING TERMS OF COURTS ACT WAS NOT STRONG SO SUBSTITUTION WAS MADE. EMBOFFS ALSO ASKED ABOUT EFFECT OF DELETING LANGUAGE WHICH PROHIBITED COURTS FROM STAYING ACTION BY AGENCY PENDING APPEALS. ROBINSON SAID THAT THIS LANGUAGE WAS UNNECESSARY. FEDERAL COURTS ACT, SECTION 28, DOES NOT CONFER ON COURTS RIGHT TO STAY ACTS OF A REGULATORY AGENCY. SUCH POWER IS CONFERRED ON COURTS ONLY BY SPECIAL LEGISLATION. SINCE SUCH SPECIFIC LANGUAGE IS NOT IN BILL, APPEAL PROCESS WOULD NOT SUSPEND ANY ORDER BY AGENCY AND LEAD TO DELAYS IN PIPELINE CONSTRUCTION.

6. WITH RESPECT TO AMENDMENT DELETING FIRST TWO SUB-SECTIONS OF CLAUSE 16, ROBINSON SAID, ORIGINAL LANGUAGE GAVE PIPELINE AGENCY MINISTER POWER WHICH COULD BE USED TO CHANGE REGULATIONS COVERED BY OTHER LEGISLATION WITHOUT REFERENCE TO PARLIAMENT. PIPELINE AGENCY MINISTER EXISTING PROCEDURES, I.E., ORDERS-IN-COUNCIL, SO THESE EXCESSIVE AND UNNECESSARY POWERS WERE REMOVED FROM BILL. ENDERS

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